

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ELROY W. BROWNING,

CASE NO. 1:05-cv-00342-AWI-LJO (PC)

Plaintiff,

SECOND ORDER REQUIRING PLAINTIFF
TO EITHER FILE AN AMENDED
COMPLAINT OR NOTIFY COURT OF
WILLINGNESS TO PROCEED ONLY ON
CLAIMS FOUND TO BE COGNIZABLE BY
COURT

JEANNE WOODFORD, et al.,

Defendants.

(Docs. 11 and 12)

Plaintiff Elroy W. Browning (“plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On August 8, 2005, the court issued an order finding that plaintiff’s complaint contains a cognizable claim for relief against defendants Castro, Jackson, and Lopez for use of excessive force, in violation of the Eighth Amendment, but does not contain any other claims upon which relief may be granted. Plaintiff was ordered to either file an amended complaint or notify the court of his willingness to proceed only against defendants Castro, Jackson, and Lopez on his Eighth Amendment excessive force claim. On August 17, 2005, plaintiff filed a notice stating that he does not wish to amend and wishes to proceed against defendants Castro, Jackson, and Lopez for use of excessive force and Parra for failing to protect him.

Plaintiff's notice does not comply with the court's order. Plaintiff must either amend or notify the court of his willingness to proceed only against defendants Castro, Jackson, and Lopez on his Eighth Amendment excessive force claim. Parra was not named as a defendant in the complaint and plaintiff did not allege an Eighth Amendment claim based on the failure to protect him in the

1 complaint. Therefore, plaintiff may not simultaneously agree to proceed only on his cognizable
2 excessive and add a party and a claim. The only way plaintiff may add a party and a defendant is to
3 file an amended complaint.

4 Accordingly, within **thirty (30) days** from the date of service of this order, plaintiff is
5 directed to comply with the court's order of August 8, 2005, by either (1) filing an amended
6 complaint or (2) notifying the court that he is willing to proceed only against defendants Castro,
7 Jackson, and Lopez on his Eighth Amendment excessive force claim.

8
9 IT IS SO ORDERED.

10 Dated: August 21, 2005
b9ed48

/s/ **Lawrence J. O'Neill**
UNITED STATES MAGISTRATE JUDGE